

81-2271/1

10 DEC 1981

Mr. Donald E. Sowle
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, D.C. 20503

DD/A REGISTRY
FILE: 27

Dear Mr. Sowle:

Your memorandum of October 30, 1981, requested the views of the Central Intelligence Agency (CIA) on a draft of the Proposal for a Uniform Federal Procurement System. Chapters 1 through 6 of the document are introductory, provide background information, or describe future directions of our Federal Government procurement system. While reserving the right to take exception to statutory or regulatory proposals emanating from these chapters, we agree generally with their thrust and commend your office on efforts to date.

Chapter 7 is, "A Model Legislative Proposal for a Uniform Procurement System." There are a number of requirements in this proposal which are inconsistent with our existing regulations and procedures or which, more importantly, would denigrate or prohibit responsiveness by this Agency to mission requirements. Comments on this chapter are:

Section 5 (page 92): This section makes the Act applicable to all executive agencies and would seriously impair CIA activities. It is essential that any uniform procurement system proposal supported by the Administration contain an explicit endorsement of the Central Intelligence Agency's unique requirements and special authorities. We request, therefore, that the Model Legislative Proposal be amended by redesignating current section 5, "Applicability," as subsection 5(a) and inserting a new subsection 5(b) as follows:

"SEC. 5. (b) Nothing in this Act shall be construed to require any disclosure of information which would be inconsistent with the protection of intelligence sources or methods, or to otherwise affect the authorities granted to the Director of Central Intelligence or to the Central Intelligence Agency by statute or executive order. Nor shall anything in this Act be construed to affect any regulation issued pursuant to section 403c or 403j of Title 50, United States Code, or any subsequently enacted legislation related to the procurement authorities of the Central Intelligence Agency."

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Section 101.(b) (page 93): This section of the Act specifies and limits circumstances that would permit noncompetitive procurement. We believe that the circumstances under which a noncompetitive contract may be awarded should be expanded to include:

"(6) when classification or sensitivity of any element of the procurement mandates disclosure to only one contractor;

(7) when substantial government investment in equipment, facilities, or know-how under an existing contract would have to be duplicated for a new contractor, thereby resulting in prohibitive additional costs and/or untimely delays."

Section 103 (page 94): This section discusses evaluation factors and methods for competitive solicitations. It seems to place great emphasis on price (particularly subparagraph (d)) and to ignore the concept of cost realism which has been important in the past. Does the section address only fixed-price contracts? Will this language increase the frequency of "buy-ins" and overruns or exorbitant follow-on costs?

Section 105 (pages 94-95): This section requires publication in the Commerce Business Daily of information prior to solicitation and subsequent to contract award. The Director of Central Intelligence is charged with responsibility for protection of sources and methods. To carry out this responsibility, the Director has established a policy that no publication of information on solicitations or awards is permitted. Language prohibiting our contractors from publicizing information on awards is included in every contract. Recognition of this policy must be included in the Act.

Section 301 (page 100): This section requires that agency heads support the goals of the Office of Federal Procurement Policy (OFPP) by making services, personnel, and facilities available upon demand. While we support the objectives of the OFPP, we believe that heads of executive agencies must retain discretionary authority for the utilization of services, personnel, and facilities within their span of control. Mission responsiveness in CIA must take precedence over requirements of the Act.

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Section 303 (page 101): Language in this section would require that the CIA implement each procurement standard promulgated by the OFPP and certify to the Administrator within one year that the CIA is in compliance. The section also makes the authority of the CIA under any other law to prescribe policies, standards, regulations, procedures, and forms for procurement subject to authority conferred in the Act.

Procurement standards issued by OFPP might interfere with CIA performance of operational requirements or compromise sources and methods. CIA will comply to the maximum practicable extent; however, conformance decisions must be made unilaterally by the Director of Central Intelligence.

Section 304 (pages 101-102): This section would grant authority to issue Government-wide procurement regulations jointly to the Secretary of Defense, the Administrator for the General Services Administration, and the Administrator for the Office of Federal Procurement Policy. CIA takes no exception to this policy except to note that, by agreement with former Administrators for OFPP, it has utilized the Defense Acquisition Regulations as a guide, augmenting them as necessary, to facilitate peculiar Agency requirements. The CIA would continue to utilize as a guide the procurement regulation issued by the Secretary of Defense, yielding no jurisdiction to the Secretary except as otherwise provided by law.

Section 305 (page 102): This section authorizes the establishment of a Federal Procurement Data System (already in place). It does not specify or list agencies required to input data.

Many of CIA's relationships with its contractors are classified with third-party privacy denied. The Agency cannot input data into the system without compromising classified information. This fact has been transmitted to OFPP.

Section 308 (page 102): The sensitive nature of CIA's mission, along with the responsibility of the Director of Central Intelligence, conflicts with the requirement of this section to give access to all information and records necessary for the performance of the functions of OFPP.

A specific exemption from the requirement of this clause must be included for CIA.

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Sections 404 and 405 (pages 104-108): These sections amend a large number of procurement laws applicable to many agencies. Appropriately, specific procurement authorities of CIA are not amended.

In addition to the above comments, Mr. James M. Frey, Assistant Director for Legislative Reference, Office of Management and Budget (OMB), has asked separately for comments. To be totally responsive to OMB, these separate comments requested by Mr. Frey are being provided directly to him by Stanley Sporkin, General Counsel, CIA.

In closing may I say that we appreciate the opportunity to comment on the subject and extend our best wishes for successful completion of this ambitious project.

Sincerely,

[Redacted Signature]

STAT

Harry E. Fitzwater
Deputy Director
for
Administration

cc: General Counsel
Executive Registry

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Director of Logistics

12/7/81
Date